



243685

PHYSICAL DOCUMENT

LPS-n243685-v1

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

Author: Woolner, Rhodora

Document Type: FILINGS

LSA(s):

Co-Counsel:

Counsel LSA(s):

Distribution List: Woolner, Rhodora (ENRD); Lattin, Sue (ENRD); Rose, Robert (ENRD); Norwood, Richard (ENRD); Hebb, Kevin M. (ENRD); True, Michael (ENRD)

Fileroom: LPS - Main Justice

DJ#:

Case Name:

Court: CA C.D. Cal.; 9th Cir.

Notes: SCANNED/UNASSIGNED: CALIFORNIA RIVER WATCH VS. MARINA SHIPYARD, ET AL

Double-Sided:

Received Date: 9/4/2015

Urgent:

Oversize:

Bound Document:

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbcglobal.net



***Via Certified Mail
- Return Receipt Requested***

August 28, 2015

Citizen Suit Coordinator
U.S. Department of Justice
Environment and Natural Resources Div.
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

DEPT. OF JUSTICE - ENRD
ENVIRONMENT DIVISION
15 SEP -4 P3:17

Re: *California River Watch vs. Marina Shipyard, et al*
USDC Case No.: 2:14-cv-03828 DDP
Settlement Agreement and Mutual Release of Claims - August 28, 2015

Dear Citizen Suit Coordinator:

In compliance with 33 U.S.C. §1365(c)(3), we enclose for review a copy of the Settlement Agreement and Release entered into by the parties in resolution of the above-captioned matter.

Thank you for your consideration.

Sincerely,


Jack Silver

JS:lhm

Enclosure

cc: David J. Weinsoff, Esq. (*No enclosure*)
Therese Y. Cannata, Esq. (*No enclosure*)
Kimberly A. Almazan, Esq. (*No enclosure*)
Patricia J. Chen, Esq.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement"), effective as of the last date of execution below ("Effective Date"), is made by and between California River Watch, a nonprofit corporation, on behalf of itself and its members ("CRW"), and Marina Shipyard and Jerry Tretter ("Owners and Operators"). CRW and the Owners and Operators are sometimes hereinafter each referred to as a "Party" or collectively as the "Parties."

RECITALS

- A. California River Watch is a 501(c)(3) nonprofit, public benefit corporation organized under the laws of the State of California, dedicated to protect, enhance, and help restore the surface waters and groundwater including all rivers, creeks, streams, wetlands, vernal pools and tributaries of California.
- B. The Marina Shipyard is owned by Jerry Tretter and located at 6400 E. Marina Drive in Long Beach, California ("Site"). Marina Shipyard is subject to various federal and state regulatory requirements under the federal Clean Water Act ("CWA"), including compliance with the State Water Resource Control Board's General Industrial Activities Storm Water Permit ("General Permit").
- C. On February 5, 2014, CRW served Marina Shipyard and Jerry Tretter with a 60-Day Notice of Violations and Intent to File Suit ("Notice Letter") alleging various violations of the CWA relating to activities at the Site. On May 19, 2014 CRW filed suit in this matter, *California River Watch v. Marina Shipyard, Jerry Tretter, et al.*, USDC Central Dist, Case No. 2:14-cv-3828-DDP-MAN ("CRW Complaint").
- D. The Owners and Operators deny all of CRW's allegations that it is liable to CRW for any claims that were, or could have been, asserted against the Owners and Operators based upon the Notice Letter and/or the CRW Complaint.
- E. The Parties have expended effort and resources in investigating and evaluating allegations and claims set forth in the Notice Letter and the CRW Complaint, including the exchange of information regarding the Site, conducting a site visit, as well as engaging in a negotiation and technical dialogue regarding settlement. The Parties memorialize the environmental achievements of the Owners and Operators in the "Press Release," attached to this Agreement as Exhibit A and incorporated herein by reference.
- F. The Parties now wish to resolve and settle all disputes, obligations, and purported or actual claims or causes of action, which may exist by and between CRW and the Owners and Operators, including without limitation any disputes, obligations, claims and/or causes of action that were or

could have been asserted in or pursuant to the Notice Letter.

NOW, THEREFORE, in consideration of the execution of this Agreement and the releases, satisfactions and promises made herein, it is hereby agreed upon by the Parties as follows:

TERMS AND CONDITIONS

1. Parties Bound By This Agreement. This Agreement, and each of its provisions, including all representations, warranties, and promises contained herein, binds, and inures to the benefit of CRW and the Owners and Operators, and each of their respective assigns, present and future affiliates, parents, subsidiaries, predecessors and successors in interest whether by merger, consolidation, or otherwise, as well as their respective representatives, agents, and administrators, past, present, and future.

2. Actions By the Owners and Operators. In compliance with all applicable laws, the Owners and Operators have performed and/or intend to perform the below specified projects:

2.1. Prepare and Implement an Updated and Expanded SWPPP.

- *The Owners and Operator's current Storm Water Pollution Prevention Plan ("SWPPP") has been updated and will be revised as necessary to ensure it is consistent with the requirements of the new General Permit (Water Quality Order 2014-0057-DWQ) that goes into effect July 1, 2015.]*
- *Storm water from the outdoor boat repair area is collected in a rectangular catch basin that runs approximately 75% of the width of the facility. The boat repair areas are bermed so that the storm water flow is directed to the rectangular catch basin either by surface flow or gravity flow through four-inch diameter underground pipes. Storm water or wash water from the southwest side of the property that is outside of the rail area, is directed to a series of sumps. The sumps along the western perimeter of the facility will be used to collect water. The water is subsequently pumped using a sump pump and hose directed to the catch basin. The basin is equipped with underground piping to the Alamitos Bay Marina but the valves are not used and remain closed at all times. All water collected in*
- *The catch basin is treated through the waste water and filtration treatment system and reused.*
- *Catch basin and debris collection sump in catch basin is cleaned before every anticipated storm event and on an as needed basis; it is also inspected approximately every two weeks.*
- *Site is inspected daily for compliance with housekeeping protocol, special attention will be given to catch basin area as well as areas under/around boats on which work is being performed.*

- *Three-stage oil/water separator and clarifier has been installed.*
- *Portable overspray screens are used when washing boats so as to minimize or eliminate potential pollutants from traveling through the Site.*
- *Paint screens are used when spray painting boats so as to minimize or eliminate potential pollutants from traveling through the Site.*
- *Site is swept and pressure-washed daily, and process water is captured, filtered and reused.*

2.2. Submission of Additional Reports to CRW. To the extent that annual or other monitoring reports are not otherwise uploaded to and made available on the Regional Water Quality Control Board's storm water database, the Owners and Operators agree to provide CRW with a copy of any reports concerning matters addressed in this Agreement. The Owners and Operators may furnish copies of any such reports to CRW in either hard copy or digital form.

2.3. Site Visits. CRW shall be permitted to conduct (1) site visit of the Site within one (1) year after the Effective Date of this Agreement to review BMPs designed to ensure compliance with the General Permit and implemented at the site. The CRW shall give the Owners and Operators seventy-two (72) hours advanced notice of its intent to conduct the site visit.

3. Fees and Costs. In recognition of Marina Shipyard's satisfaction of CRW's environmental concerns and compliance with the General Permit through the addition of substantial new and improved Best Management Practices ("BMPs") as detailed in Paragraph 2, CRW waives all attorneys' fees and costs incurred through the Effective Date of this Agreement.

4. Mutual Release. It is the intent of the Parties that the execution and delivery of this Agreement constitutes a full and complete satisfaction of all rights, claims and demands by CRW against the Owners and Operators, and the Owners and Operators against CRW, with respect to any and all allegations and claims made in the Notice Letter under the Clean Water Act. CRW and the Owners and Operators, on behalf of itself and any and all of its agents, representatives, successors, members, and assigns, does hereby absolutely, fully, and forever release, relieve, remise, and discharge the Owners and Operators and CRW, respectively, and its past and present employees, officers, directors, attorneys, and the predecessors, successors, and assigns of any of them, from any and all causes of action, claims, damages (including punitive damages), demands, debts, actions, attorneys' fees, costs of suit, and liabilities of every kind or nature whatsoever, arising out of claims asserted in the Notice Letter and/or the CRW Complaint under the CWA concerning the Site. The release provided for herein shall be valid and effective whether the claims, causes of action, or liability hereby released (i) were known or unknown, suspected or unsuspected, (ii) were based in contract, tort, statute, or otherwise, or (iii) arise at law or in equity. This release shall survive the termination of this Agreement, whether by satisfaction of the terms and conditions hereof or

operation of law.

Further, the parties acknowledge that they are familiar with Section 1542 of the California Civil Code. For any other claims against each other, known or unknown, suspected or unsuspected, and each party expressly waives and relinquishes any rights and benefits which they have or may have under Section 1542 of the Civil Code of the State of California, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release which if known by him or her must have materially affected his or her settlement with the debtor.

The Parties acknowledge that each has specifically reviewed with its attorney the meaning and effect of the release set forth herein, the language of California Civil Code Section 1542, and the waiver contained herein. The Parties acknowledge that their attorneys have fully explained the impact of these provisions, and the Parties knowingly accept the risks associated with these provisions.

5. No Admission. This Agreement is the direct result of a compromise of disputed allegations and claims. As such, this Agreement shall not, for any purpose, be considered as an admission of liability by the Owners and Operators.

6. Breach of Agreement and Dispute Resolution. Any disputes between CRW and the Owners and Operators concerning any alleged breach of this Agreement shall be subject to the following dispute resolution procedures:

6.1. Good Faith Negotiations. CRW and the Owners and Operators shall make good faith efforts to resolve informally any alleged breach of the Agreement. If informal efforts to resolve the alleged breach are unsuccessful, that Party shall provide written notice of the alleged breach and that Party's intent to initiate the dispute resolution procedure of this Section 6. The notice shall include a recitation of all facts and circumstances giving rise to the dispute, including the particular provisions of the Agreement alleged to have been breached.

6.2. Mediation. If the dispute is not resolved by the Parties within thirty (30) days after such notice is given, such dispute shall be submitted to mediation before a mutually agreeable neutral mediator. The Parties shall each bear their own costs and attorney's fees incurred in connection with such mediation.

6.3. Waiver. By agreeing to these dispute resolution provisions, the Parties understand that they are waiving certain important rights and protections that otherwise may have been available to each of them if a dispute between them were determined by a judicial action including, without limitation, the right to a jury trial, and certain rights of appeal. Other than the remedies contained within this Agreement including dispute resolution and specific

performance of the terms of this Agreement, there are no other remedies. The Parties specifically agree that there is no basis within this Agreement or within the contemplation of the Parties to support a claim for consequential damages due to any form of breach.

7. Notices. All notices, consents, approvals, requests, demands and other communications (collectively, "Notice") which the Parties are required or desire to serve upon or deliver to the other Party shall be in writing and shall be given by nationally- recognized overnight courier, by certified United States mail, return receipt requested, postage prepaid, addressed as set forth below, or by facsimile or electronic mail addressed as set forth below:

If to CRW:

Jack Silver, Esq.
Law Office of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469
Tel: (707) 528-8175
Email: lh28843@sbcglobal.net

**If to the Owners
and Operators:**

Therese Y. Cannata, Esq.
Kimberly A. Almazan Esq.
Cannata O'Toole Fickes & Almazan LLP
100 Pine Street, Suite 350
San Francisco, CA 94611
Tel: (415)409-8900
Email: tcannata@cofalaw.com
kalmazan@cofalaw.com

The foregoing addresses may be changed by Notice given in accordance with this Section 7. Any Notice sent by mail shall be deemed received two (2) days after the date of mailing. Any Notice sent by facsimile shall be deemed received upon electronic confirmation of the successful transmission thereof, and any Notice sent by electronic mail shall be deemed received upon electronic transmission thereof provided sender does not receive electronic notice of non-delivery. Any Notice sent by overnight courier service shall be deemed received on the day of actual delivery as shown by the confirmation of delivery by the messenger or courier service. If the date of receipt of any Notice to be given hereunder falls on a weekend or legal holiday, then such date of receipt shall automatically be deemed extended to the next business day immediately following such weekend or holiday for purposes of calculating time periods commencing upon the date of service.

8. Attorneys' Fees. Each Party shall bear its own past and future attorneys' fees and costs relating to the subject matter of this Agreement.

9. Parties' Acknowledgment of Terms. This Agreement has been carefully and fully read

and reviewed by CRW, the Owners and Operators, and their respective counsel, if any, who hereby represent that the contents of this Agreement are understood, and agree that this Agreement is binding on each Party or its respective predecessors, successors, and assigns and as described above.

10. Interpretation and Applicable Law. This Agreement shall be construed and interpreted in accordance with the laws of the United States and the State of California without regard to principles of conflicts of law. This Agreement shall be interpreted and construed as a whole, according to its fair meaning and not strictly for or against any Party, and without regard to which Party drafted the Agreement. All of the promises, representations, and warranties contained in this Agreement survive the execution of this Agreement.

11. No Assignments. Each Party to this Agreement represents and warrants that it has not assigned, transferred, hypothecated, or sold to any third person or entity, any of the rights or obligations released by or entered into under this Agreement.

12. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall evidence one and the same agreement.

13. Headings. The headings used in this Agreement are for convenience of reference and shall not be used to define any provision.

14. Entire Agreement In Writing. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter set forth herein and supersedes all previous or contemporaneous negotiations, commitments (oral or written), and writings with respect to the subject matter set forth herein.

15. Modification or Amendment. This Agreement or any of its provisions may be modified or amended only by written agreement executed by all Parties to this Agreement.

16. Severability. The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision. If, in any action before any court or other tribunal of competent jurisdiction, any term, restriction, covenant, or promise is held to be unenforceable for any reason, then such term, restriction, covenant, or promise shall be deemed modified to the extent necessary to make it enforceable by such court or other tribunal and, if it cannot be so modified, that this Agreement shall be deemed amended to delete here from such provision or portion adjudicated to be invalid or unenforceable, and the remainder of this Agreement shall be deemed to be in full force and effect as so modified. Any such modification or amendment in any event shall apply only with respect to the operation of this Agreement in the particular jurisdiction in which such adjudication is made.

17. Representations and Warranties. This Agreement is given voluntarily, free of undue influence, coercion, duress, menace, or fraud of any kind. No Party, nor any officer, agent,

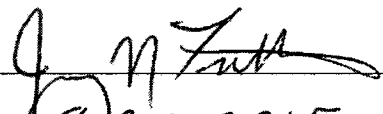
employee, representative, or attorney of or for any Party, has made any statement or representation to any other Party regarding any fact relied upon in entering this Agreement, and no Party is relying upon any statement, representation, or promise of any other Party, nor of any officer, agent, employee, representative, or attorney of or for any Party, in executing this Agreement or in making the settlement provided herein, except as expressly stated in this Agreement.

18. No Third Party Beneficiaries. This Agreement is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Agreement for any cause whatsoever. Subject only to the express restrictions contained in this Agreement, all of the rights, duties and obligations contained in this Agreement shall inure to the benefit of and be binding upon the Parties, and their successors and assigns.

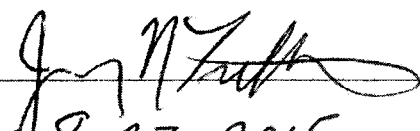
19. Authority. Each of the persons signing this Agreement on behalf of an entity represents and warrants that he or she has actual authority and capacity to execute this Agreement on behalf of the entity and to bind it to all of the terms of this Agreement.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their duly authorized representatives.

MARINA SHIPYARD

By: 
Dated: 8-27-2015

JERRY TRETTER

By: 
Dated: 8-27-2015

CALIFORNIA RIVER WATCH

By: _____
Larry Hanson
Board President

Dated:

employee, representative, or attorney of or for any Party, has made any statement or representation to any other Party regarding any fact relied upon in entering this Agreement, and no Party is relying upon any statement, representation, or promise of any other Party, nor of any officer, agent, employee, representative, or attorney of or for any Party, in executing this Agreement or in making the settlement provided herein, except as expressly stated in this Agreement.

18. No Third Party Beneficiaries. This Agreement is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Agreement for any cause whatsoever. Subject only to the express restrictions contained in this Agreement, all of the rights, duties and obligations contained in this Agreement shall inure to the benefit of and be binding upon the Parties, and their successors and assigns.

19. Authority. Each of the persons signing this Agreement on behalf of an entity represents and warrants that he or she has actual authority and capacity to execute this Agreement on behalf of the entity and to bind it to all of the terms of this Agreement.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their duly authorized representatives.

MARINA SHIPYARD

By: _____


Dated:

JERRY TRETTER

By: _____

Dated:

CALIFORNIA RIVER WATCH

By:  _____
Larry Hanson
Board President

Dated: 08-28-15

CRW/Marina Shipyard Press Release Language

California River Watch, a California-based non-profit environmental organization devoted to protecting California's water quality, in conjunction with Marina Shipyard, a family-owned and operated boat yard serving customers in the Long Beach area for three generations, announce today that River Watch and Marina Shipyard entered into a Settlement Agreement through which River Watch dismisses its lawsuit against Marina Shipyard for alleged violations of the Clean Water Act. The lawsuit was filed on May 19, 2014 in the Central District of California under case number 2:14-cv-3828-DDP-MAN. The Settlement Agreement is published on the River Watch website.

California River Watch has investigated and evaluated its allegations and claims. After exchanging information with Marina Shipyard and conducting a site inspection, California River Watch has determined that Marina Shipyard's environmental achievements more than adequately achieve California River Watch's goals of protecting, enhancing and helping to restore the surface waters and groundwater, including all rivers, creeks, streams, wetlands, vernal pools, and tributaries, of California.

California River Watch believes that the Settlement Agreement is in the best interest of all parties and strongly commends Marina Shipyard for its innovative and dedicated approach to storm water management.

EXHIBIT A

1 Jack Silver, Esq. SB #160575
E-mail: lhm28843@sbcglobal.net
2 Law Office of Jack Silver
Post Office Box 5469
3 Santa Rosa, CA 95402-5469
Tel. (707) 528-8175
4 Fax. (707) 528-8675

5 David J. Weinsoff, Esq. SB# 141372
Email: david@weinsofflaw.com
6 Law Office of David J. Weinsoff
138 Ridgeway Avenue
7 Fairfax, CA 94930
Tel. (415) 460-9760
8 Fax. (415) 460-9762

9 Attorneys for Plaintiff
CALIFORNIA RIVER WATCH

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

14 CALIFORNIA RIVER WATCH, a
501(c)(3), non-profit, Public Benefit
15 Corporation,

16 Plaintiff,
17 v.

18 MARINA SHIPYARD, JERRY
TRETTER, DOES 1-10, Inclusive,
19 Defendants.

CASE NO: 2:14-cv-03828- DDP-MAN

**NOTICE OF SETTLEMENT AND
OF PENDING REVIEW BY U.S.
DEPARTMENT OF JUSTICE**

Pre-Trial Conference: July 16, 2016
Trial August 15, 2016

21 NOTICE IS HEREBY GIVEN by Plaintiff CALIFORNIA RIVER WATCH, that
22 this matter has been resolved in its entirety by way of written Settlement Agreement and
23 Release executed by the parties effective August 28, 2015. A copy of the Settlement
24 Agreement and Release has been provided to the U.S. Department of Justice as of August
25 28, 2015 for a mandatory 45-day agency review pursuant to 33 U.S.C. §1365(c)(3).

26 A dismissal of this action with prejudice shall be promptly filed by Plaintiff after
27 the agency has completed its review, or upon termination of the agency review period,
28 whichever occurs first.

1 Dated: August 28, 2015

LAW OFFICE OF JACK SILVER

2
3 By: /s/ Jack Silver
4 Jack Silver
5 Attorney for Plaintiff
6 CALIFORNIA RIVER WATCH
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COURTESY COPY

Law Office of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469

CERTIFIED MAIL™



7013 0600 0000 2746 2642



1000



20044

U.S. POSTAGE
PAID
SANTA ROSA, CA
95404
AUG 28, 15
AMOUNT
\$7.67
00128421-09

X-RAYED
SEP 04 2015

Citizen Suit Coordinator
U.S. Department of Justice
Environment and Natural Resources Div.
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

FROM: LAW OFFICE OF JACK SILVER
CARR: United States Postal Service
TRK#: 70130600000027462642
RCVD: 9/4/2015 1437

TO: Hebb, Kevin M. (ENRD)
PH: 202-373-7550
BDG: PH
RM:
PCS: 1



9999000073437

RTE:
MSC: PH2121
Hebb, Kevin M. (ENRD)